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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/043,665	10/05/1998	STEPHEN JAMES RUSSELL	MEWB112010	7083

29933 7590 12/02/2002

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EXAMINER

SHUKLA, RAM R

ART UNIT	PAPER NUMBER
1632	

DATE MAILED: 12/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/043,665	RUSSELL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ram R. Shukla	1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 September 2002 and 12 November 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### **DETAILED ACTION**

1. The request filed on 9-13-02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/043,665 is acceptable and a CPA has been established. An action on the CPA follows.
2. Amendments and response filed 11-12-02 has been entered.
3. Claims 11-21 have been cancelled.
4. Claims 1, 2, 4 and 6-8 have been amended.
5. Claims 1-8 are pending and under consideration.
6. The 112 first paragraph rejection has been withdrawn in view of the argument of the applicants and their admission on record that the instantly claimed invention does not encompass senescent cells.
7. The 102 rejection has been withdrawn in view of the amendment that the growth factor is encoded by an exogenous nucleic acid.
8. The 103 rejection has been withdrawn in view of the applicants' arguments.

### ***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
10. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the surface bound growth factor" in line 7. There is insufficient antecedent basis for this limitation in the claim since the claim does not recite a surface bound growth factor.

Claim 1 recites the limitation "said cells" in line 8. The antecedent basis for this limitation in the claim is indefinite because it is unclear as to which cell the term is referring to, the quiescent cell or the retroviral packaging cell.

Claim 4 is vague and indefinite because it is unclear as to which retroviral packaging cell the term "said retroviral packaging cell" refers to, the cell before expression of the growth factor or the cell after the expression of the growth factor.

Claims 5 and 6 are vague and indefinite because it is unclear as to what is meant by the term "a fusion". Use of the term "a fusion protein" is suggested.

Claim 8 is vague and indefinite because it is unclear as to which retroviral packaging cell the term "said retroviral packaging cell" refers to, the cell before expression of the growth factor or the cell after the expression of the growth factor.

11. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation a viral envelope protein, and claim 5 on which this claim is dependent recites a retroviral envelope protein which is the narrower statement of the range/limitation.

Applicants are advised to call the Examiner to discuss the 112 second issues and alternate language to address these issues.

12. No claim is allowed.

When amending claims, applicants are advised to submit a clean version of each amended claim (without underlining and bracketing) according to **§ 1.121(c)**.

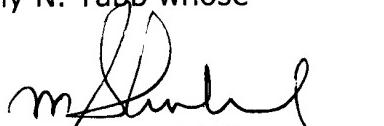
For instructions, Applicants are referred to

<http://www.uspto.gov/web/offices/dcom/olia/aipa/index.htm>.

Applicants are also requested to submit a copy of all the pending/under consideration claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ram R. Shukla whose telephone number is (703) 305-1677. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Reynolds, can be reached on (703) 305-4051. The fax phone number for this Group is (703) 308-4242. Any inquiry of a general nature, formal matters or relating to the status of this application or proceeding should be directed to the Tiffany N. Tabb whose telephone number is (703) 605-1238.

Ram R. Shukla, Ph.D.



RAM R. SHUKLA, PH.D  
PATENT EXAMINER